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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF RIGBY WATER COMPANY FOR
APPROVAL OF TRANSFER OF ASSETS
AND CONDITIONAL CANCELLATION OF
ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY

DOCKET NO. W-01808A-10-0390

**RIGBY WATER COMPANY'S
RESPONSE TO STAFF REPORT**

Applicant Rigby Water Company hereby responds to the Staff Report for Rigby Water Company – Application for Approval of Transfer of Its Assets to the City of Avondale and Conditional Cancellation of its Certificate of Convenience and Necessity for Water Service dated March 15, 2011(the “Staff Report”). Although Rigby Water Company is generally in agreement with the findings and recommendations supporting transfer of its Certificate of Convenience and Necessity (“CC&N”) and assets to the City of Avondale (the “City”), which is awaiting entry of a final judgment completing a condemnation of that Certificate in a Maricopa County Superior Court action, there are procedural recommendations in the Staff Report that are incongruent with the completion of the condemnation action and the orderly and prompt transfer of Rigby’s assets to the City.

The principal practical problem with Staff’s Report stems from its recommendation that “Rigby’s CC&N stay in effect, for the sole purpose of the MXA [mainline extension agreement] refund, until all the MXA is paid or when the time elapses whichever comes first.” [Staff Report at 4.] Staff’s recommended condition in this regard is unworkable and legally untenable. Rigby Water Company cannot both be subject to the continuing

1 obligations of a holder of a CC&N in the area condemned by the City, and have its assets
2 and service area be completely taken over by the City, as provided in the condemnation
3 proceeding. Rigby Water Company's CC&N is a principal asset being acquired by the City;
4 it cannot be taken by the City and also kept in effect for the remaining term (nearly ten
5 years) of Rigby Water Company's single outstanding mainline extension agreement.¹

6 Under well-established Arizona law, a CC&N obligates a private water utility to
7 provide water service to any customers seeking utility service within the boundaries of the
8 CC&N. See *James P. Paul Water Co. v. Arizona Corporation Comm.*, 137 Ariz. 426, 429,
9 671 P.2d 404, 407 (1983). Once granted, the Arizona Supreme court has specifically noted
10 that "the certificate confers upon its holder an exclusive right to provide the relevant service
11 for as long as the grantee can provide adequate service at a reasonable rate." *Id.* at 429, 671
12 P.2d at 407; see also *In re Application of Trico Elec. Coop.*, 92 Ariz. 373, 380-81, 377 P.2d
13 309, 315-16 (1962). Under Arizona law and Staff's recommendation, Rigby Water Company
14 would arguably continue to be required to provide water service to anyone seeking service
15 within the boundaries of its existing CC&N, even though the infrastructure for providing such
16 service would have been condemned by the City.

17 Moreover, the settlement agreement entered into by the parties to the condemnation suit
18 and approved by the City's Council requires that Rigby Water Company obtain the
19 cancellation of its CC&N from the Arizona Corporation Commission ("Commission") prior to
20 entry of final judgment in the City's pending condemnation suit. Staff's recommended
21 condition would delay entry of final judgment for the remaining term of the mainline extension
22 agreement, and in essence stall final entry of judgment in the City's suit, thwarting the City's
23 desire to immediately take over the provision of water service within Rigby's CC&N area. It

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25 ¹ The Staff Report contains a related recommendation (in paragraph 3, p. 4) that
26 approval of Rigby Water Company's pending Application be conditioned on Rigby Water
27 Company filing a motion to delete its conditional CC&N once the obligations of the
28 mainline extension agreement have been met or the term of that agreement expires, which
again is scheduled for approximately ten years. That recommended condition should be
rejected, along with the indeterminate continuance of Rigby Water Company's CC&N.

1 is doubtful that Staff intended by this recommended condition that the City's takeover of
2 service be delayed for approximately ten years.

3 The City Council approved the settlement of the condemnation action and the general
4 details of taking over Rigby Water Company's CC&N and assets last September. A final
5 Settlement Agreement setting forth those full details has since been finalized. Rigby Water
6 Company's CC&N is essentially being deleted in favor of municipal service within its borders.
7 As in other cases where the entire assets and certificate of a public service corporation are
8 condemned by a municipality under Title Nine of the Arizona Revised Statutes, for the City's
9 takeover to be completed, a "clean" transfer and deletion of the CC&N without conditions
10 must occur.

11 There are other means to enforce Rigby Water Company's ongoing contractual
12 obligation to provide refund payments pursuant to the existing mainline extension agreement.
13 Rigby Water Company's current agreement with the City makes specific provisions for such
14 repayments, including provisions requiring the City to provide Rigby Water Company with the
15 sale and revenue information necessary to calculate annual refunds under the mainline
16 extension agreement. Requiring Rigby Water Company's CC&N to remain in effect during
17 this period provides no additional security; the contractual basis of Rigby's obligation to
18 provide refunds under the existing mainline extension agreement remains in place with or
19 without a CC&N. Moreover, Rigby Water Company has told Staff that it is willing to post
20 cash security in a segregated account, or separate escrow account under the control of the
21 Commission on agreed terms, if there is a concern about ongoing security. But to ransom the
22 very asset being transferred as security for a comparatively small refund payment stream is
23 inappropriate and unfair to the City as well as Rigby Water Company, both of which have been
24 awaiting conclusion of the substantial condemnation case for over six months.

25 Because Staff's recommendation with respect to the continuation of Rigby Water
26 Company's CC&N are unnecessary and impracticable, Rigby Water Company objects to
27 inclusion of the second and third conditions found on page 4 of the Staff Report in any order
28 entered by the Commission with respect to Rigby Water Company's present Application

1 RESPECTFULLY SUBMITTED this 29th day of March, 2011.

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1 **ORIGINAL** and 13 copies of the foregoing
2 filed this 29TH day of March, 2011 with:

3 Docket Control Division
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7 **COPIES** of the foregoing hand-delivered
8 this 29TH day of March, 2011, to:

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26 **COPY** of the foregoing mailed
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